



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

May 14, 1948

Hon. Odis Tomachefsky
County Attorney
Washington County
Brenham, Texas

Opinion No. V-579

Re: Authority of Commissioners' Court to pay for a rock crusher with time warrants to be paid by tax for permanent improvements.

Dear Sir:

We refer to your letter of April 22, 1948, in which you ask if Washington County may issue time warrants to be paid by a tax levied for permanent improvements, to pay for a rock crusher for use in preparing materials for the construction of roads in said county.

In the case of Carroll v. Williams, 109 Tex. 155, 202 S. W. 504, the Supreme Court of Texas said:

"Moreover, in this instance the attempted transfer of money was not from a fund raised for 'streets * * * and other permanent improvements,' but was from the general fund for 'county purposes,' which is an entirely distinct and different fund, and which, as we have attempted to show, cannot be applied, lawfully, on roads and bridges.

"Taxes levied ostensibly for any specific purpose or class of purposes designated in section 9 of article 8, supra, must be applied thereunto, in good faith; and in no event and under no circumstances may there be expended, legally, for one such purpose or class of purposes, tax money in excess of the amount raised by taxation declaredly for that particular purpose or class of purposes. But this rule would not prevent the proper expenditure, for such purpose or purposes, of any unexpended balance in the corresponding fund brought over from any previous year or years."

Applying the principles announced in this case to the situation about which you inquire, tax money raised for the purchase of road equipment (rock crusher) must come from the road and bridge fund and not the permanent improvement fund. Therefore the Commissioners' Court is without authority to issue time warrants against the permanent improvement fund for the purpose of purchasing a rock crusher, because this would constitute an unlawful transfer and diversion of constitutional funds.

SUMMARY

The Commissioners' Court is not authorized to issue time warrants, to be paid by a tax for permanent improvements, for the purchase of a rock crushing machine for use in preparing material to be used in the construction of public roads.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By

W. T. Williams
W. T. Williams
Assistant

WTW:wb

APPROVED:

Fagan Dickson
FIRST ASSISTANT
ATTORNEY GENERAL